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September 3, 1999

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Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, SW
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: CC Docket 96-98: Second Further Notice of Proposed Rulemaking in the Matter of the Local Competition Provisions in the Telecommunications Act of 1996

Dear Ms. Salas:

Yesterday, Mr. F. Gumper and Mr. J. Pachulski, representing Bell Atlantic, met with Commissioner Ness and Ms. L. Kinney, Legal Advisor to Commissioner Ness, to discuss Bell Atlantic's position on the availability of unbundled switching elements. Also participating in the meeting were representatives of Ameritech, ATT, and Comptel.

The Bell Atlantic representatives presented positions previously filed in the above referenced proceeding.

In accordance with Section 1.1206(a)(1) of the Commission's rules, an original and one copy of this notice are being submitted to the Secretary.

Sincerely,

A handwritten signature in cursive script that reads "Susanne Guyer".

Susanne Guyer

cc: Commissioner Ness
L. Kinney

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UNE Remand Proceeding

Docket No. 96-98

Bell Atlantic
September 2, 1999

Much has changed since the Commission first established unbundling rules

- More than \$30 billion has been invested in local competitors
- Local competitors have deployed hundreds of switches and millions of miles of fiber optic networks in major metropolitan areas
- Local competition is growing faster than long distance competition

The impact of this competitive activity is evident in the Bell Atlantic region

- There are more than 650,000 interconnection trunks running between Bell Atlantic's switches and its competitors' switches.
- Bell Atlantic exchanged over 31.2 billion minutes of traffic with competing carriers last year and is now averaging over 4.3 billion minutes of traffic each month.
- Local competitors have more than 1,500 physical and virtual collocation nodes in Bell Atlantic's central offices.
- Competing carriers have over 725,000 fiber miles
- Competing carriers are serving nearly 1,700,000 lines dispersed throughout the region -- including approximately 900,000 served entirely over their own facilities, more than 700,000 served through resale, and approximately 100,000 served using loops and other network elements.

In light of the substantial investment local competitors have already made in competing facilities, the Commission needs to take a balanced approach.

Too much unbundling can harm competition just as much as too little unbundling.

- The availability of network elements at TELRIC prices will discourage new entrants from investing in their own facilities and retard innovation.
- The requirement to make network elements available at TELRIC prices will discourage incumbent carriers from investing in and upgrading their existing networks.
- Requiring incumbents to unbundle network elements that competitors have already deployed will undermine those competitors' ability to compete.

The Commission only should require unbundling of elements that competitors truly need in order to compete; it should not require unbundling of network elements that competitors don't need.

At a minimum, where competing carriers have already deployed a particular network element or can obtain it from other sources, incumbent carriers should not be required to unbundle that element.

Where elements are already deployed by competing carriers, they should not be unbundled either individually or in combination with other elements (particularly as part of a so-called UNE-Platform).

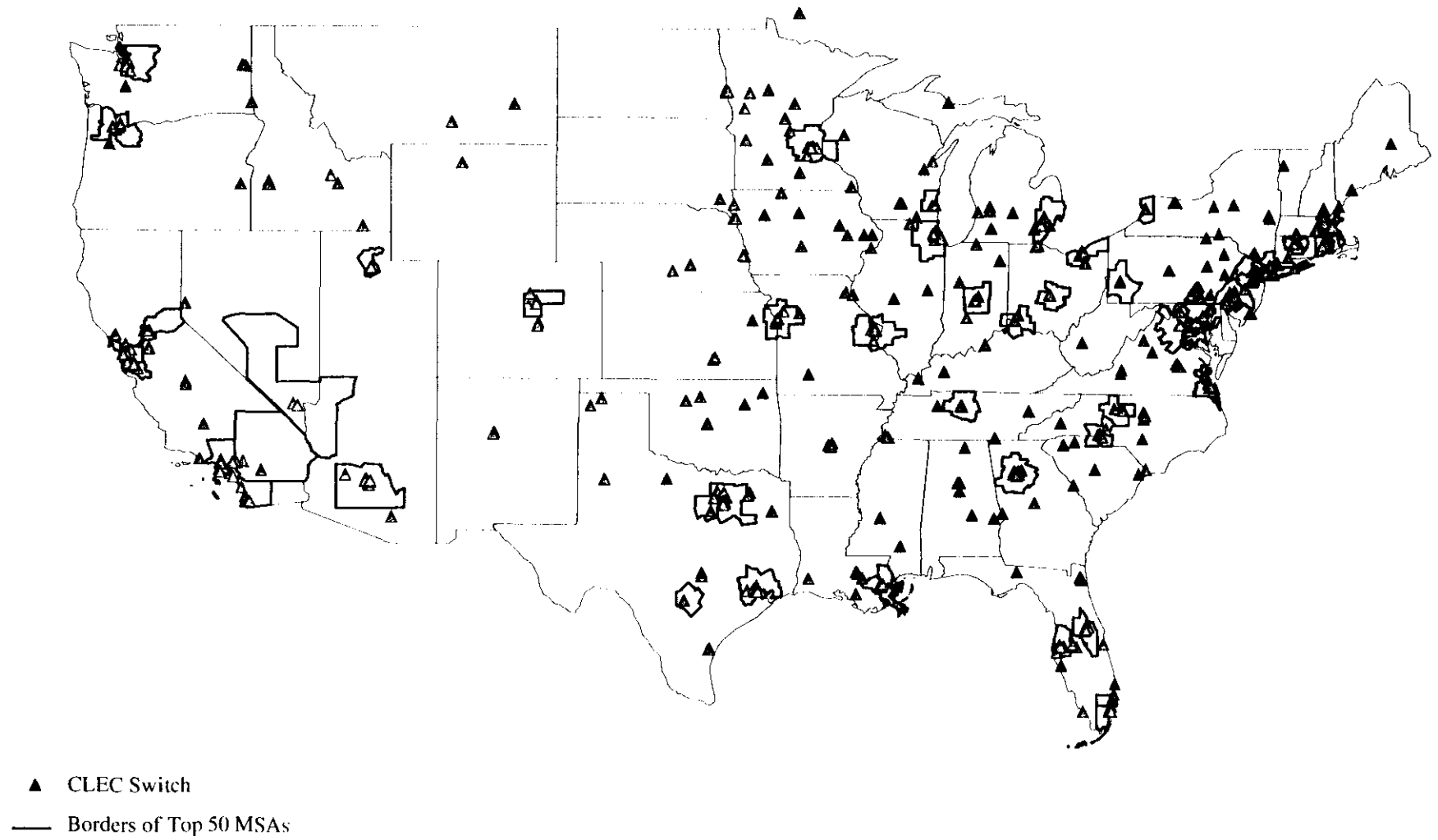
The UNE-Platform Damages Investment and Competition

- ALTS told the Supreme Court that “the availability of [UNE Platform] at the lower prices usually generated by section 251(c)(3)’s pricing standard would lessen the incentive for new entrants to build their own facilities.” Brief of ALTS, No. 97-286, p. 8 (May 18, 1998).
- Intermedia explained that “[i]f a competing carrier can obtain an entire platform [of preassembled network elements] at incremental cost that effectively replaces a tariffed service, it will have no incentive to invest in deploying its own facilities in the local network.” Reply Comments of Intermedia Communications, Case No. 97-C-1963, at 5 (N.Y. P.S.C. Dec. 12, 1997).
- Time Warner opposed a recommended state commission decision because “the ALJ failed to address adequately the negative impact on investment in new facilities that would result if a rebundling platform, priced at TELRIC prices, is made available to new entrants.” Brief on Exceptions of Time Warner Communications Holdings, Inc., Case No. 98-C-0690, at 4 (N.Y. P.S.C. Aug. 18, 1998).

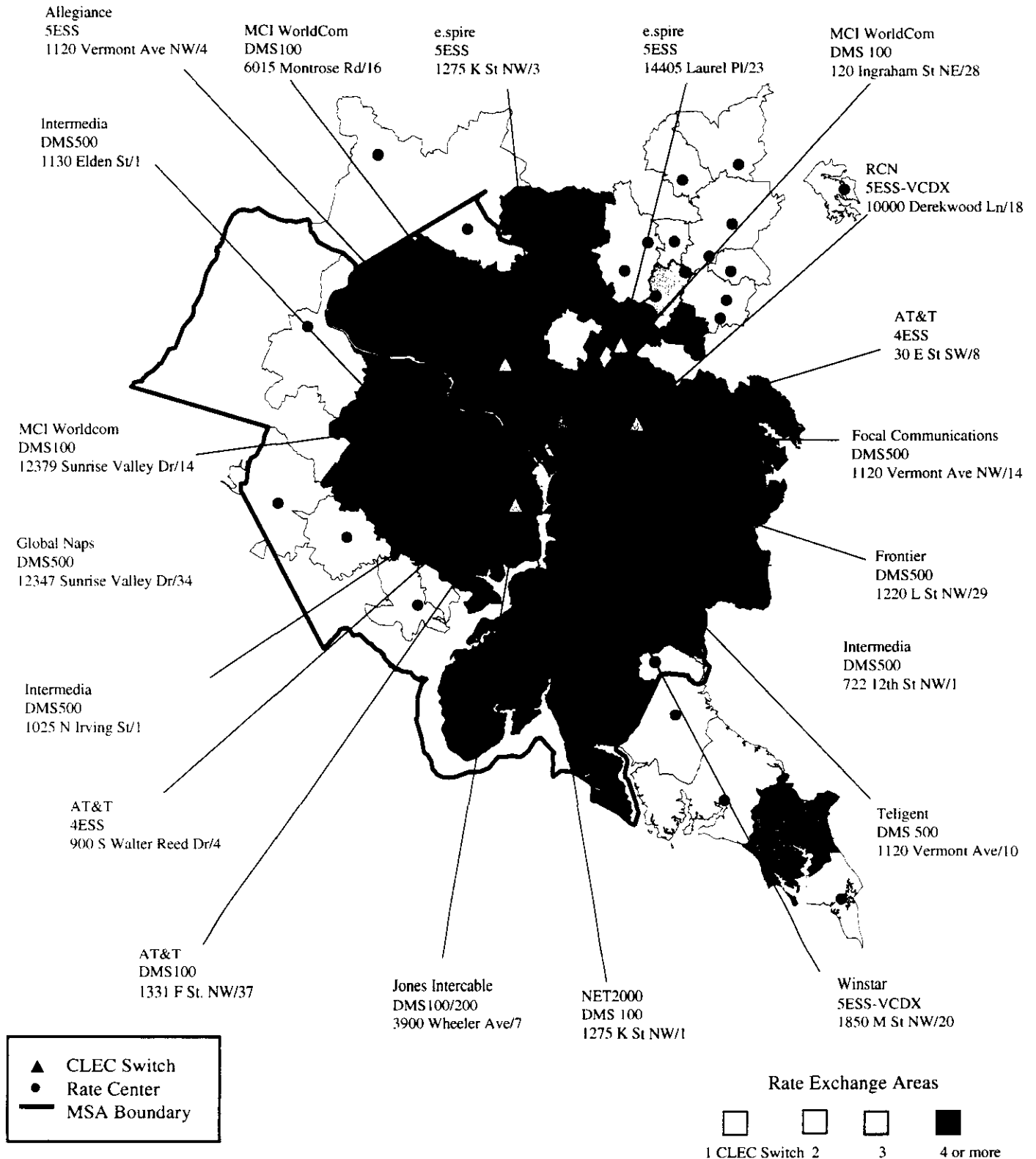
The Markets Where Local Switching Should Not Be Unbundled

- Over 160 competing carriers have already deployed over 700 of their own local switches, and more than 150 of these switches are located in the Bell Atlantic region.
- Competing carriers' switches can serve customers at least 600 miles away.
- Competing carriers have not had a problem raising capital for switches. "Focal was a start-up company with almost no business three years ago, yet Focal has been able to raise almost two hundred million dollars from venture capital and high-yield markets, and now provides metropolitan Chicago, New York, Boston, Washington, Los Angeles, San Francisco, and Philadelphia with services from seven operating switches, with additional facilities planned for the near future." Focal Comments, FCC Docket No. 96-98 at 4.
- Competing carriers have already obtained more than 4,500 NXX codes for their switches.
- Nearly 60 percent of rate exchange areas in the Bell Atlantic region have at least one competing carrier with its own switch and NXX code.
- At least 38 percent of Bell Atlantic's rate exchange areas have at least two carriers with their own switch and NXX codes.

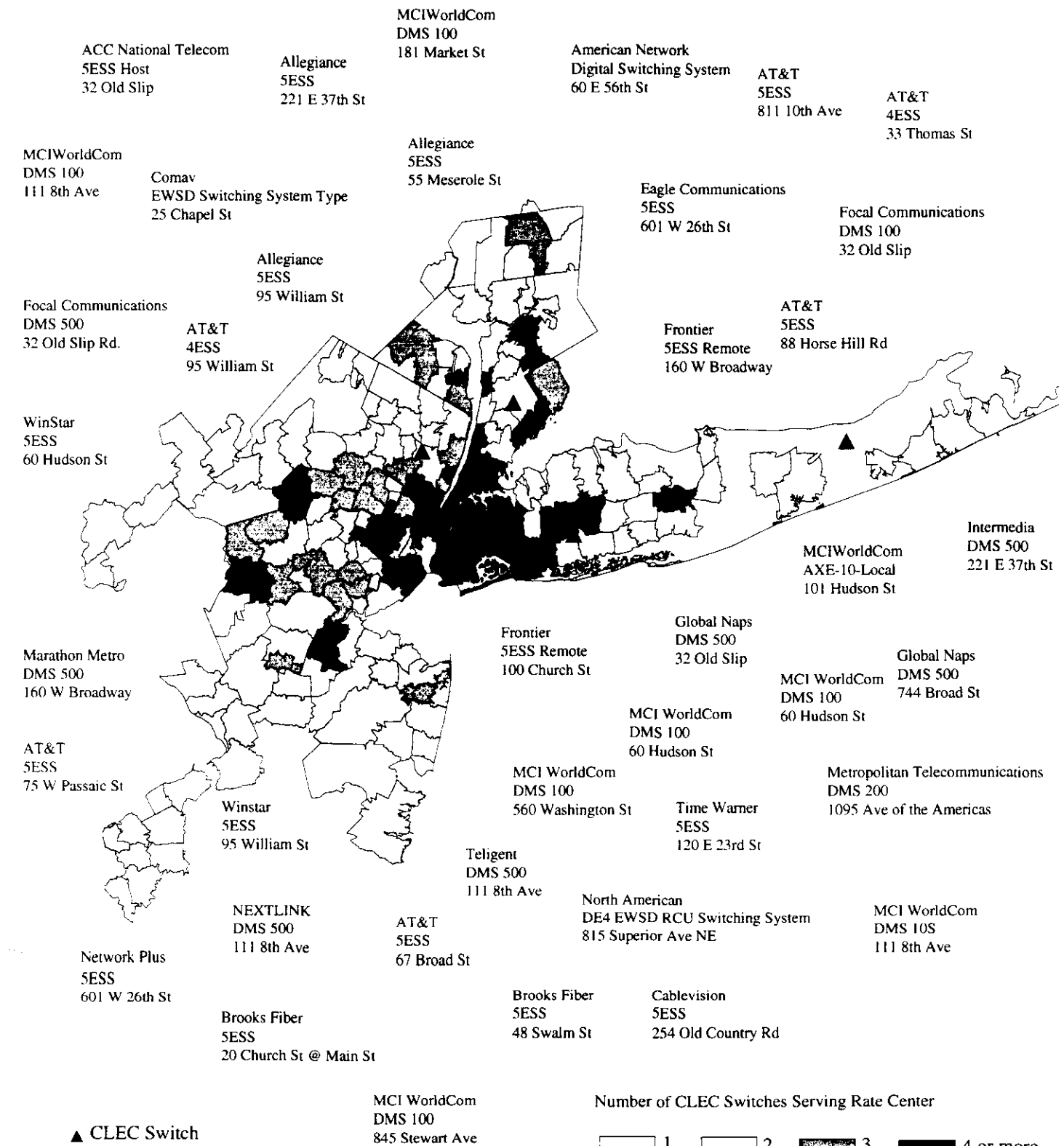
Map 1. CLEC Switches



Map 2. CLEC Switches and Competitively Served Rate Centers Washington, DC MSA



CLEC Switches And Competitively Served Rate Centers In New York Metro



Carriers Are Not Entitled to Unbundled Network Elements To Substitute For Access Services

- Section 251(d)(2) provides for unbundling of network elements only where “the failure to provide access to such network elements would *impair* the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.” 47 U.S.C. § 251(d)(2)(B)(emphasis added). This provision allows the FCC to draw service-based distinctions on the availability of unbundled network elements. Since competing carriers have been successfully providing special access services on a competitive basis for many years without using unbundled network elements, the failure to provide access to network elements on an unbundled basis would not impair their ability to provide special access services.
- Congress expressly preserved the Commission’s pre-existing system of access charges and did not replace it with an unbundling system.
 - Section 251(i) provides that “[n]othing in this section shall be construed to limit or otherwise affect the Commission’s authority under section 201” – the provision under which the Commission sets interstate access charges. See *MTS and WATS Market-Structure*, 93 F.C.C.2d 241, 255 & 41 (1983).
 - Section 251(g) provides “[o]n and after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier . . . shall provide exchange access . . . to interexchange carriers . . . in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment . . . under any . . . regulation, order or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment.”
 - The 8th Circuit upheld the Commission’s authority to distinguish between the rules for local and access traffic. By incorporating the language “including receipt of compensation,” Congress preserved incumbent LECs’ existing rights, under Commission “regulation[s], order[s], or polic[ies],” to collect access charges from interexchange carriers. *CompTel*, 117 F.3d 1068 (8th Cir 1997).
 - Section 251(c)(3) allows telecommunications carriers to obtain non-discriminatory access to unbundled network elements “for the provision of a telecommunications service . . .” A carrier that seeks to use

unbundled network elements solely to originate or terminate its own long distance traffic is not providing an exchange access service of its own, it is merely purchasing an access service. As the Commission explained, "an IXC that seeks to interconnect solely for the purpose of originating or terminating its own interexchange traffic is not offering access, but rather is only obtaining access for its own traffic."

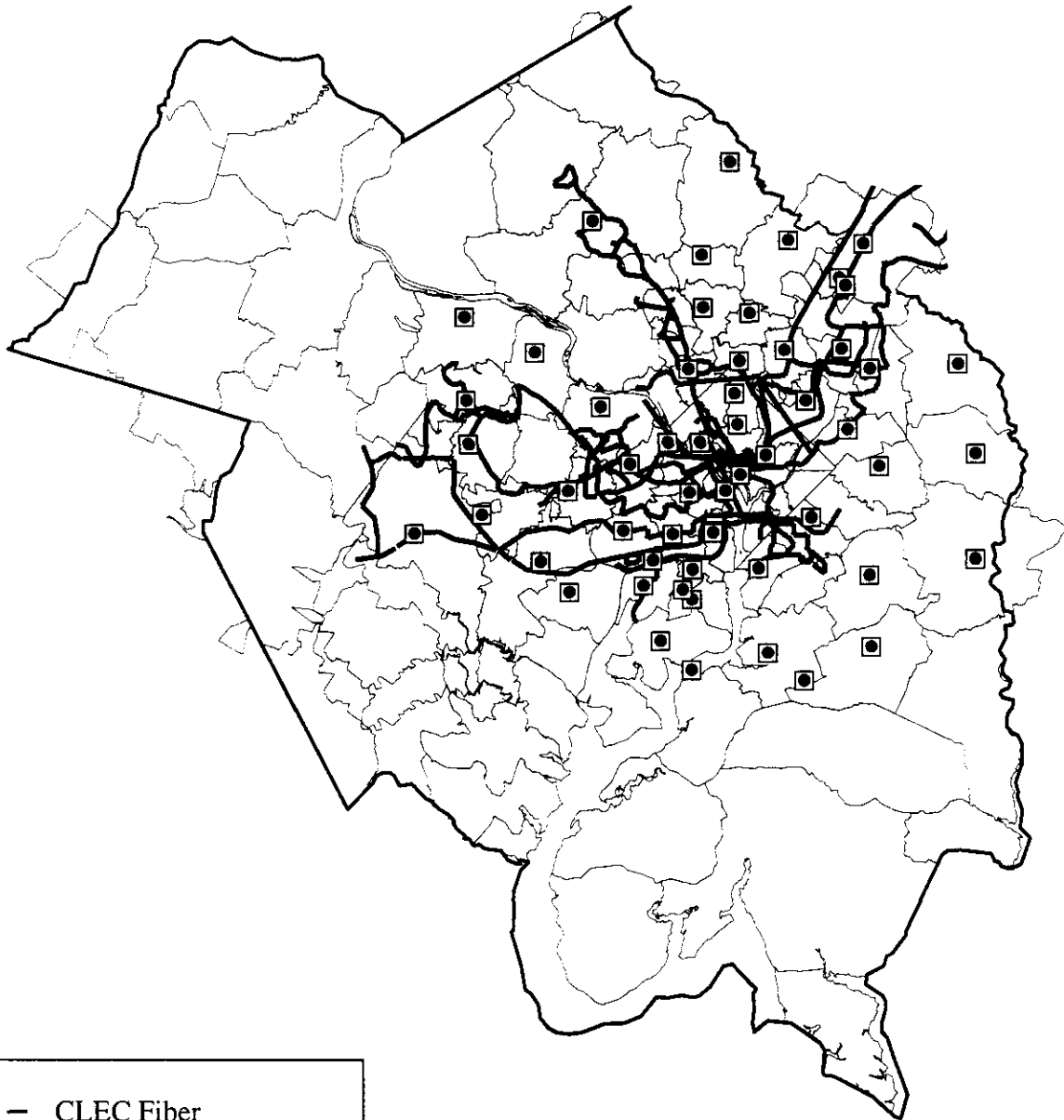
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, ¶ 191 (1996). Traditional interexchange carriers will only be deemed to be "providing" a service where they "offer access services to other carriers as well as to themselves." *Id.*

- There is no reason for the Commission to allow carriers to replace their existing special access services with unbundled local transport and "reprice" the access services they receive today with unbundled element rates.

The Markets Where Local Transport Facilities Should Not Be Unbundled

- Competitors have over 725,000 miles of fiber in the Bell Atlantic region.
- Competitors have connected their networks to Bell Atlantic wire centers through over 1,500 collocation arrangements.
- Competitors have also connected their networks to interexchange carrier points-of-presence and hundreds of office buildings in each major metropolitan.
- Competing networks can now service approximately *90 percent* of the Bell Atlantic's special access transport customers in Bell Atlantic's 12 most densely populated jurisdictions.
- By the beginning of 1998, competitors were using their own networks to provide approximately 30 percent of the high capacity special access services in these jurisdictions and up to 50 percent in key business centers.

Map 3. CLEC Fiber And Collocation
Washington, DC MSA



Advanced Services Equipment Should Not Be Unbundled Anywhere

- Advances services equipment is not a carryover from a public utility era; it is a risky investment made by Bell Atlantic in a competitive market with absolutely no assurance that those investments will be successful or profitable.
- The Commission has already determined that the market for advanced services is a competitive one. “[C]onsumers currently can obtain high-speed Internet access from a wide array of providers using various technologies: cable operators, wireline telephone companies, providers of wireless telecommunications service, and a satellite communications firm.” *AT&T Corp. v. City of Portland*, 9th Circuit Case No. CV 99-65 PA, FCC Brief.
- Bell Atlantic does not have a headstart over competing carriers with respect to advanced services technology.
- Bell Atlantic and competing carriers are subject to advanced services competition from alternative media, such as cable modems and wireless.
- Imposing an unbundling obligation on advanced services equipment would discourage investment in that equipment.